

NOT FOR PUBLICATION

NO. 23216

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

LEPO TALIESE UTU, also known as Lepo Utu Taliese,
Defendant-Appellee

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 99-0551)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of the record and Plaintiff-Appellant State of Hawaii's answer to the order to show cause, it appears that: (1) Plaintiff-Appellant is appealing from the findings of fact, conclusions of law, and order granting a motion for a new trial filed by Defendant-Appellee Lepo Taliese Utu, also known as Lepo Utu Taliese; (2) on January 7, 2004, it was reported that Defendant-Appellee Lepo Taliese Utu, also known as Lepo Utu Taliese, died; (3) due to the reported death of Defendant-Appellee, on February 11, 2004, this court issued the following order:

Upon consideration of the record and publicly reported events, it appears Defendant-Appellee Lepo Taliese Utu is deceased, the issues posed by Plaintiff-Appellant State of Hawaii's appeal are mooted, and this court could not provide any remedy to the State if it were to prevail in the appeal. Therefore,

IT IS HEREBY ORDERED that Plaintiff-Appellant State of Hawaii shall, . . . show cause as to why this appeal should not be dismissed.

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(4) on February 24, 2004, the State filed a response:

(a) confirming the death of Defendant-Appellee Lepo Taliese Utu, also known as Lepo Utu Taliese; and (b) stating that the State does not oppose dismissal of the appeal. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed.

DATED: Honolulu, Hawai'i, February 27, 2004.